

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

21 MC 102 (AKH)  
(ALL CASES)

IN RE: LOWER MANHATTAN  
DISASTER SITE LITIGATION

DECLARATION OF  
CHRISTOPHER R. LoPALO

-----X

Christopher R. LoPalo, an attorney duly admitted to practice law in the State of New York, and a Member of the Bar of this Honorable Court, hereby Declares under penalty of perjury:

1. I am associated with the law firm of Worby Groner Edelman & Napoli Bern, LLP, (“WGENB”), attorneys for certain Plaintiffs in the above-referenced Master Docket and as such am fully familiar with the facts and circumstances of the within action.
2. This Declaration is submitted in support of the instant motion, which seeks an order pursuant to Fed. R. Civ. P. 30 and 37, compelling Defendant Marina Towers Associates, LP (“Defendant”) to designate and produce a witness(s) for deposition pursuant to Rule 30(b)(6) within thirty (30) days and for such other and further relief as this Court deems just and proper.
3. On April 11, 2013 defendant Marina Towers Associates, LP was substituted in as a defendant in place of the Lefrak Organization and Hudson Towers Housing Co. Inc. Exhibit 1 to this Declaration is a true and correct copy of the “So Ordered” Stipulation Amending Master and Check-Off Complaints.
4. On February 20, 2013, WGENB served deposition notices pursuant to Rule 30(b)(6) on Defendant’s counsel. Attached to this Declaration as Exhibits “2” and “3” are true and correct copies of those Deposition Notices.

5. On March 27, 2013, WGENB served Deposition Notices pursuant to Rule 30(b)(1) on Defendant's counsel; these were directed to Garry Flammenbaum and Charles Mehlman. True and correct copies of those Deposition Notices are attached to this Declaration as Exhibits "4" and "5".

6. Plaintiffs are informed and reasonably believe that Gary Flammenbaum was the Assistant General Manager of Lefrak Organization, Inc. and Hudson Towers Housing Co. Inc., and as such, has knowledge of the work performed at 400 Gateway Plaza.

7. Plaintiffs are also informed and reasonably believe that Charles Mehlman was the Senior Vice President of Lefrak Organization, Inc. and Hudson Towers Housing Co. Inc., and as such, has knowledge of the work performed at 400 Gateway Plaza.

8. Between March 1, 2013 and May 6, 2013 Plaintiffs attempted without success to confer with Defendant's counsel to schedule and conduct these depositions. Attached hereto as Exhibit 6 is a true and correct copy of an email chain between counsel documenting our attempts to schedule these depositions.

8. Plaintiffs originally noticed Defendant's depositions for March and May 2013. Defendant failed to comply with the Plaintiffs' notices and its counsel has not offered firm deposition dates anytime soon.

9. Plaintiffs have taken all reasonable steps to schedule the depositions of Mr. Flammenbaum and Mr. Mehman, but to no avail.

10. Accordingly, this Court is asked to issue an order pursuant to Fed. R. Civ. P. 37, compelling Defendant to designate and produce its witnesses for depositions pursuant to Fed. R. Civ. P. 30 within thirty (30) days and for such other and further relief as this Court deems just and proper.

I declare under penalty of perjury that the foregoing is true and correct.

WHEREFORE, it is requested that the within motion be granted in all respects.

Dated: New York, New York  
May 14, 2013

Respectfully submitted,

/s/ Christopher R. LoPalo

Christopher R. LoPalo

Worby Groner Edelman & Napoli Bern, LLP

350 Fifth Avenue, Suite 7413

New York, New York 10118

(212) 267-3700

*Attorneys for Plaintiffs*